IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1661 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIMAHEMAD GULAMNABI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1661 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MR VM PANCHOLI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/06/2003

ORAL JUDGEMENT

By filing the present petition the order of detention dated 6.1.2003 is challenged. Pursuant to the aforesaid order of detention the detenu is detained by the Commissioner of Police, Ahmedabad City, in exercise of powers conferred on him by sub-section (2) of Section

3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (the 'Act' for short).

2 At the time of hearing of the present petition it is argued by the learned advocate for the petitioner that at the relevant time when the petitioner was detained by way of detention order he was already in judicial custody. However, the detaining authority has merely stated that the petitioner-detenu may get bail and maybe released on bail though there was nothing on record to suggest that any bail application was moved by the petitioner. It is submitted that the authority has not stated as to on what basis he reached such conclusion.

3. Ms.Banna Datta, Learned Advocate for the petitioner has relied upon the decision of Amritlal and other V. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 Supreme Court 3675 wherein it is observed as under:-

"In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic

Substances Act, 1988."

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6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

Considering the aforesaid aspects of the matter and considering the fact that when the order of detention was passed, the petitioner was already in judicial custody and especially when there is nothing on record to suggest that the petitioner maybe released on bail at any point of time, the order of detention is required to be quashed and set aside.

4 In view of the above, the petition is allowed. The order of detention dated 06.01.2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. is permitted.

(P.B. Majmudar, J.)

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